

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE

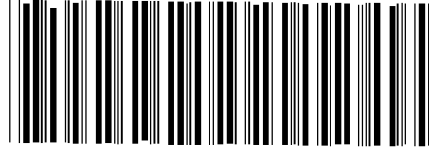
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OFFICIAL RECORDS OF  
ALAMEDA COUNTY  
PATRICK O'CONNELL

07/20/2000 01:45 PM

RECORDING FEE: 0.00



40 PGS

Recording Requested by:

City of Alameda or Alameda Reuse  
and Redevelopment Authority  
Economic Development Division  
950 West Mall Square #215  
Alameda, CA 94501  
Attn: Jeffrey T. Bond

DH

When Recorded, Mail to:

Department of Toxic Substances Control  
10151 Croydon Way, Suite 3  
Sacramento, CA 95827-2106  
Attention: A. J. Landis, P.E., Chief  
Office of Military Facilities

AJL

LJC

JH

COVENANT  
TO RESTRICT USE OF PROPERTY  
(ENVIRONMENTAL RESTRICTIONS)

Fleet and Industrial Supply Center, Oakland  
Alameda Facility and Alameda Annex  
and  
Alameda Naval Air Station East Housing  
Alameda, California

This Covenant To Restrict Use of Property ("Covenant") is made on the 17 day of  
July, 2000 by the City of Alameda or Alameda Reuse and Redevelopment Authority ("City" or  
"ARRA" or "Covenantor"), which is the current owner of the property restrictedly this  
Covenant, and the California Environmental Protection Agency - Department of Toxic  
Substances Control (the "Department" or "Covenantee").

RECITALS/STATEMENT OF FACTS

A. Covenantor is the owner of record of that certain real property consisting of  
approximately 210 acres (the "Property") situated in the City of Alameda, County of Alameda,  
State of California. The Property formerly was part of the United States Navy installation  
commonly known as the Fleet and Industrial Supply Center, Oakland, Alameda Facility and  
Alameda Annex and the adjacent part of the former Alameda Naval Air Station commonly

1 known as East Housing. A legal description of the Property is set forth in Exhibit **A** and is  
2 incorporated therein by this reference. A figure depicting the location of the Property is set forth  
3 in Exhibit **B** and is incorporated herein by this reference.

4 B. The Property was formerly owned by the United States Navy.

5 C. The Navy has caused to be completed environmental response actions on and in  
6 connection with the Property. Such actions include, but are not limited to, preparation of a  
7 **Removal Action Workplan for Marsh Crust at East Housing Area, Alameda Point ("RAW")** that  
8 has been approved by the Department, and the implementation of response actions pursuant to  
9 the RAW that allow the Property to be used without significant risk to human health and without  
10 significant potential for future environmental damage.

11 D. Pursuant to California Civil Code section 1471(c), the Department has determined  
12 that this Covenant is reasonably necessary to protect present or future human health and safety or  
13 the environment as a result of the potential presence of hazardous materials, as defined in  
14 California Health and Safety Code section 25260, in the marsh crust and the shallowest  
15 groundwater zone, as defined below, under the surface of land at the Property. The Department  
16 has also determined that such protection is part of the remedy contemplated in the RAW. The  
17 Covenantor and the Department therefore intend that the use of the Property be restricted as set  
18 forth in this Covenant to protect human health, safety and the environment.

19 E. The Property is planned for mixed uses including residential use. ..Before 1920,  
20 the Property and surrounding areas were undeveloped tidal marsh along Alameda Island's San  
21 Francisco Bay shoreline. Between approximately 1900 and 1940, the Property and surrounding  
22 areas were filled with sand and clay material from unknown sources.

23 F. "Marsh crust" means the underground layer that is the remnant of the tidal marsh  
24 that existed along the shoreline of Alameda Island before filling to create additional dry land. In  
25 many places, this layer contains hazardous materials from former industrial discharges that were  
26 retained in the historic marsh before filling. These hazardous materials include petroleum  
27 hydrocarbons (TPH) and polynuclear aromatic hydrocarbons (PAHs). The marsh crust is a  
continuous underground layer, at depths of 5 to 20 feet from the surface, that extends bayward o

1 the original mean higher high tide line of Alameda Island, before filling, throughout the area that  
2 was filled.

3 G. The “shallowest groundwater zone” is in the fill at the Property, is first  
4 encountered at depths from 4 to 8 feet below ground surface (bgs) and extends to a maximum  
5 depth of approximately 20 feet bgs. The shallowest groundwater zone does not include any  
6 deeper groundwater zone that is hydraulically separated **from** the fill. In particular, the  
7 shallowest groundwater zone does not include the “Merritt Sand” zone, which is first  
8 encountered at approximately 10 to 105 feet bgs and is hydraulically separated from the fill by  
9 Bay Mud, the thickness of which ranges from 5 to 95 feet at the Property. The shallowest  
10 groundwater zone is currently not usable for drinking water because of the presence of naturally  
11 occurring inorganic constituents (total dissolved solids and some metals). Because of this  
12 intrinsic use limitation of the groundwater, the contamination of organic constituents (volatile  
13 organic compounds, TPH, and PAHs) related to former activities at or in the vicinity the  
14 Property, may, at this time, remain in place provided there are sufficient controls and restrictions  
15 to protect the public health, safety, and the environment.

16 ARTICLE I.  
17 ADDITIONAL DEFINITIONS

18 1.1 Occupant(s). “Occupant(s)” means any person or entity entitled by ownership,  
19 leasehold, or other legal relationship to occupy any portion of the Property.

20 1.2 Owner(s). “Owner(s)” means the Covenantor, its successors in interest and their  
21 successors in interest, including heirs and assigns, who at any time hold fee title to all or any  
22 portion of the Property.

23 1.3 Excavation ordinance. “Excavation ordinance” means City of Alameda  
24 Ordinance No. 2824, a copy of the current version of which is attached as Exhibit C and  
25 incorporated herein by this reference.

26 1.4 Threshold depth. “Threshold depth” is the elevation above which there is little  
27 likelihood that hazardous materials from the marsh crust would have mixed during filling. The  
threshold depth for any location at the Property is shown on an exhibit to the Excavation

1 ordinance and will be derived from the RAW or other applicable remedial decision document.

2 1.5 Permitted excavation. “Permitted excavation” means (i) excavation performed in  
3 accordance with a City permit approved and issued pursuant to the excavation ordinance when  
4 such permit is required under the terms of the excavation ordinance; or (ii) if the excavation  
5 ordinance has been repealed or the Department has made a written determination pursuant to  
6 subsection 3.2 that the excavation ordinance does not comport with the intent of this Covenant,  
7 excavation performed in accordance with a written approval issued by the Department.

8 1.6 Department. “Department” means the California Environmental Protection  
9 Agency, Department of Toxic Substances Control and its successor agencies, if any.

## 10 ARTICLE 11. 11 GENERAL PROVISIONS

12 2.1 Restrictions to Run with the Land. This Covenant sets forth protective provisions.  
13 covenants, restrictions, and conditions (collectively referred to as “Restrictions”), subject to  
14 which the Property and every portion of the Property shall be improved, held, used, occupied,  
15 eased, sold, hypothecated, encumbered and/or conveyed. Each and every Restriction: (a) runs  
16 with the land pursuant to California Health & Safety Code section 25355.5(a)(1)(C) and  
17 California Civil Code section 1471; (b) inures to the benefit of and passes with each and every  
18 portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is  
19 imposed upon the entire Property unless expressly stated as applicable only to a specific portion  
of the Property.

20 2.2 Binding Upon Owners/Occupants. Pursuant to California Health & Safety Code  
21 section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, and  
22 their heirs, successors and assignees, and their agents, employees, and lessees. Pursuant to  
23 California Civil Code section 1471(b), all Owners of the Property are expressly bound by this  
24 Covenant for the benefit of Covenantee.

25 2.3 Incorporation into Deeds and Leases. The Restrictions set forth in this Covenant  
26 shall be incorporated by reference in each and all deeds, leases and subleases of any portion of  
2 the Property

1       2.4       Conveyance of Property. The Owner(s) shall provide a notice to the Department  
2 not later than thirty (30) days after any sale, lease or other conveyance of the Property or a real  
3 property estate in the Property (excluding mortgages, liens, and other non-possessory  
4 encumbrances). The Department shall not, by these provisions, have authority to approve,  
5 disapprove, or otherwise affect any such sale, lease or other conveyance of the Property or estate  
6 except as otherwise provided by law, by administrative order, or by a specific provision of this  
7 Covenant.

8       2.5       Written Notification. Upon a determination that a hazardous substance is present  
9 upon or beneath nonresidential real property, a notification must be made pursuant to California  
10 health & Safety Code section 25359.7. Specifically, prior to the sale or lease of nonresidential  
11 real property, the owner or lessor shall give the buyer or lessee notice that a hazardous substance  
12 is located on or beneath the Property.

13                               ARTICLE III.  
14                               RESTRICTIONS/ENFORCEMENT

15       3.1       Applicability. The provisions of this Article shall apply to the Property described  
16 in Exhibit A and shown on Exhibit B.

17       3.2       Prohibited Activities. The following activities are prohibited on the Property:

- 18           a.       Construction of any water well screened for the extraction of water from the  
19 shallowest groundwater zone (as defined above) except as provided in this  
20 Covenant;
- 21           b.       Extraction (except for necessary construction site dewatering), utilization or  
22 consumption of water from the shallowest groundwater zone for use other than  
23 irrigation or emergency use ,e.g. firefighting;
- 24           c.       Disposal of extracted groundwater from construction site dewatering into the  
25 waters of the state except in compliance with the requirements of the Regional  
Water Quality Control Board, San Francisco Bay Region; and
- 26           d.       Engaging in any excavation below the threshold depth without a City excavation  
27 permit. If the excavation ordinance has been repealed, *or* if the Department has

made a written determination with thirty (30) days prior written notice to the City that the excavation ordinance does not comport with the intent of this Covenant, then a permitted excavation may be conducted only in accordance with a written approval issued by the Department. Covenantor's application for such an approval shall be submitted to the Department and shall otherwise comply with the permit application requirements of the last version of the excavation ordinance or such other requirements as the Department may specify.

3.3 Access For Department. The Department shall have a reasonable right of entry and access to the outdoor areas of the property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department to protect the public health or safety, or the environment.

3.4 Enforcement. Failure of the Covenantor, or Owner(s)/Occupant(s) to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner(s)/Occupant(s) remove any wells constructed or to close or otherwise remedy any excavation conducted in violation of the prohibited activities stated in subsection 3.2 of this Covenant. Violations of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

#### ARTICLE IV. VARIANCE AND TERMINATION

4.1 Variance. Covenantor or any other aggrieved person may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with California Health & Safety Code section 25233.

4.2 Termination. Covenantor or any other aggrieved person may apply to the Department for a termination of some or all of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with California Health & Safety Code section 25234.

4.3 Term. Unless terminated in accordance with subsection 4.2 above, by law or by the Department in the exercise of its discretion, this Covenant shall continue in effect in

perpetuity.

ARTICLE V.  
MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion of the Property to the general public or anyone else for any purpose whatsoever.

5.2 Department References. All references to the Department include successor agencies/departments or other successor entity.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (i) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or, (ii) three (3) business days after deposit in the mail if mailed by United States mail, postage paid and certified, return receipt requested:

To: "Covenantor":  
City of Alameda or Alameda Reuse and Redevelopment Authority  
Economic Development Division  
950 West Mall Square, #215  
Alameda, CA 94501  
Attention: Jeffrey T. Bond

To: "Department":  
Department of Toxic Substances Control  
10151 Croydon Way, Suite 3  
Sacramento, CA 95827-2106  
Attention: A. J. Landis, P.E., Chief  
Office of Military Facilities

Any party may change its address or the individual to whose attention a notice is to be sent by giving notice in compliance with this paragraph.

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth in this Covenant is determined by a court of competent jurisdiction to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion found invalid had not been included in this Covenant.

1        5.4        Article Headings. Headings at the beginning of each numbered article of this  
2 Covenant are solely for the convenience of the parties and are not a part of the Covenant.

3        5.5        Recordation. This instrument shall be executed by the Covenantor and by the  
4 Northern California Coastal Cleanup Operations Branch Chief, California Department of Toxic  
5 Substances Control. This instrument, with all referenced Exhibits, shall be recorded by the  
6 Covenantor in the County of Alameda within fifteen (15) days of the date of execution by both  
7 parties.

8        5.6        Statutory References. All statutory references include successor provisions.

9        5.7        Representative Authority. The undersigned representative of each party to this  
10 Covenant certifies that he or she is fully authorized to enter into this Covenant and to execute and  
11 legally bind that party to this Covenant.

12  
13        IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth  
14 above.

15 OWNER: City of Alameda

16 By: \_\_\_\_\_

James M. Flint

17 Title: City Manager

18 Date: \_\_\_\_\_

7-14-2002

19  
20 Approved as to Form  
CITY ATTORNEY

21 By: \_\_\_\_\_

Maria Shale

22 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

23  
24 By: \_\_\_\_\_

Anthony J. Landis, P.E.

25 Title: Chief, Office of Military Facilities

26 Date: \_\_\_\_\_

27



Covenant are solely for the convenience of the parties and are not a part of the Covenant.

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IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNER: City of Alameda

By: \_\_\_\_\_  
James M. Flint  
Title: City Manager  
Date: \_\_\_\_\_

Approved as to Form  
CITY ATTORNEY

By: \_\_\_\_\_  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: Anthony J. Landis  
Anthony J. Landis, P.E.

Title: Chief, Office of Military Facilities

Date: 7-13-00

1 OWNER: Alameda Reuse and Redevelopment Authority

2

3 By:  \_\_\_\_\_

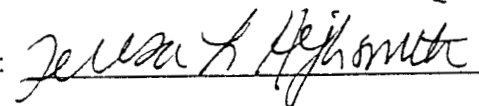
4 Title: James M. Flint

5 Title: Executive Director

6 Date: 7-14-2000

7 Approved as to Form

8 GENERAL COUNSEL

9 By:  \_\_\_\_\_

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1 STATE OF CALIFORNIA  
2 COUNTY OF Sacramento

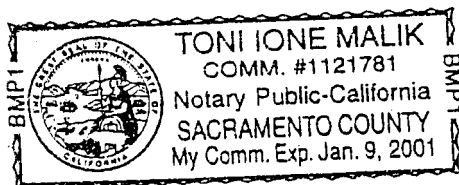
3  
4 On July 13, 2000 before me, a Notary Public in and for State of California, personally  
5 appeared Anthony J. Landis, personally known to me or proved to me on the basis of satisfactory  
6 evidence to be the person whose name is subscribed to the within instrument and acknowledged  
7 to me that she executed the same in her authorized capacity, and that by her signature on the  
8 instrument, the Department of Toxic Substances Control executed the instrument.

WITNESS my hand and official seal.

1  
1 Toni Ione Malik

1 Notary's Signature

1 ALAMEDA\FISC\DTSCMC2.WPD

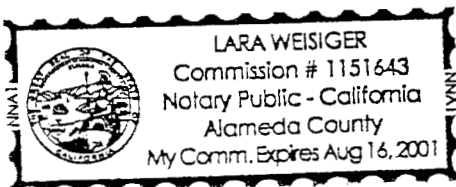


1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF Alameda )

4 On July 14, 2000 before me, a Notary Public in and for State of California, personally  
5 appeared James M. Flint, personally known to me or proved to me on the basis of satisfactory  
6 evidence to be the person whose name is subscribed to the within instrument and acknowledged  
7 to me that she/he executed the same in his authorized capacity, and that by her/his signature on  
8 the instrument the person, or the entity upon behalf of which the person acted, executed the  
9 instrument.

10 WITNESS my hand and official seal.

11 Lara Weisiger  
12 Notary's Signature



17 My Comm. Exp. 8-16 2001  
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1 STATE OF CALIFORNIA )  
2 COUNTY OF Alameda )

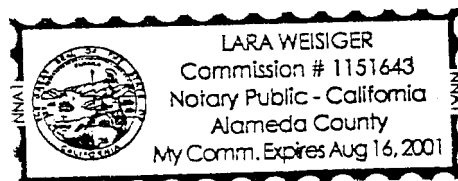
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5 appeared James M. Flint, personally known to me or proved to me on the basis of  
6 satisfactory evidence to be the person whose name is subscribed to the within instrument and  
7 acknowledged to me that she/he executed the same in his authorized capacity, and that by her/his  
8 signature on the instrument the person, or the entity upon behalf of which the person acted,  
9 executed the instrument.  
10

1 WITNESS my hand and official seal.

1: Lara Weisiger

1 Notary's Signature

1 :\\OFFICE\WPWIN\WPDOCS\ARRA\DTSCMC2.COV



My Comm. Exp. 8-16-2001

## **Exhibit A**

### **Alameda Naval Air Station East Housing**

A parcel of land being a portion of the Alameda Naval Air Station, Alameda, California, lying in the city and county of Alameda, State of California, and being all of the parcel described in that certain deed recorded June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records, and being all of the parcel described in that certain deed recorded April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, and being a portion of the parcel described in that certain deed recorded March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Atlantic Avenue, being 51 feet wide, and the easterly line of Main Street as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, in the Office of the Recorder of Alameda County:

- 1. Thence along said easterly line of Main Street and the westerly boundary line of the parcel described in that certain deed recorded March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, North  $00^{\circ}34'11''$  East, 1240.19 feet to the northerly line of the parcel described in that certain deed recorded on June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records;
2. Thence leaving said easterly line of Main Street along said northerly line of the parcel described in that certain deed recorded on June 18, 1963 in Reel 924 of Official Records at Image 879, Alameda County Records, South  $87^{\circ}51'51''$  East, 1798.27 feet to the northwesterly corner of the parcel described in that certain deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records;
3. Thence along the northerly line of the parcel described in that certain deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, South  $87^{\circ}51'51''$  East, 777.49 feet to the northeasterly corner of said parcel;

4. Thence leaving said line and along the easterly line of the parcel described in that certain-deed recorded on April 29, 1963 in Reel 871 of Official Records at Image 596, Alameda County Records, and its southerly prolongation, South 02°08'09" West, 1241.94 feet to the northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, Alameda County Records;
5. Thence westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, North 85°25'42" West, 729.54 feet;
6. Thence continuing westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, South 89°49'20" West, 584.20 feet;
7. Thence continuing westerly along said northerly line of Atlantic Avenue, being 51 feet wide, as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Maps at page 16 through 22, inclusive, North 87°26'18" West, 929.55 feet to the POINT OF BEGINNING.

Containing an area of 72.45396 acres, more or less.

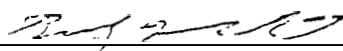
**Basis of Bearings:**

Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL." and USC & GS station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

  
Billy Martin, P.L.S. 5797  
Expires: 6/30/2004



Dated: JULY 17 2004

K:\MAIN\1998\980221\LEGAL\SEHOUSE071700.DOC

## FISC North

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of Parcel 1 and Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records and a portion of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records and a portion of Parcel No. 1 and Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records more particularly described as follows:

BEGINNING at the most northwesterly comer of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records:

1. Thence along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North  $86^{\circ}38'46''$  East, 16.02 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504, Official Records Alameda County, being the TRUE POINT OF BEGINNING;
2. Thence continuing along the northerly line of said parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North  $86^{\circ}38'46''$  East, 402.97 feet;
3. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South  $84^{\circ}06'14''$  East, 567.60 feet;
4. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, North  $87^{\circ}53'46''$  East, 726.00 feet;
5. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South  $87^{\circ}21'14''$  East, 858.00 feet;
6. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 172, Alameda County Records, South  $58^{\circ}36'14''$  East, 153.54 feet to the most



northwesterly comer of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records;

7. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on September 24, 1941 in Book 4142 of Official Records at page 18, Alameda County Records, South  $15^{\circ}28'16''$  West, 579.96 feet to the most northwesterly comer of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35;
8. Thence leaving said westerly line and along the northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South  $31^{\circ}40'14''$  East, 82.16 feet;
9. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South  $81^{\circ}24'14''$  East, 285.99 feet;
10. Thence continuing along said northerly line of Parcel No. 2 described in that certain deed recorded on December 18, 1944 in Book 4663 of Official Records at page 35, Alameda County Records, South  $88^{\circ}00'44''$  East, 87.24 feet to the most northwesterly comer of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South  $65^{\circ}48'44''$  East;
11. Thence leaving said northerly line and along the westerly line of Parcel B described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 30050.01 feet, through a central angle of  $0^{\circ}12'27''$ , for an arc length of 108.83 feet to a point on the southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South  $13^{\circ}02'54''$  West;
12. Thence leaving said westerly line along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 741.84 feet, through a central angle of  $1^{\circ}33'38''$ , for an arc length of 20.21 feet to a point of compound curvature;

- 
13. Thence—continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 980.54 feet, through a central angle of  $1^{\circ}47'59''$ , for an arc length of 30.80 feet to a point of compound curvature;
  14. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1457.97 feet, through a central angle of  $1^{\circ}12'01''$ , for an arc length of 30.54 feet to the beginning of a non-tangent curve to the left from which point a radial line bears South  $08^{\circ}27'44''$  West;
  15. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2890.33 feet, through a central angle of  $0^{\circ}36'00''$ , for an arc length of 30.27 feet;
  16. Thence continuing along said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, North  $82^{\circ}06'43''$  West, 848.13 feet to a point on the southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records;
  17. Thence leaving said southerly line of Parcel 2 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County, and along said southerly line of Parcel No. 1 described in that certain deed recorded on December 18, 1944 in Book 4652 of Official Records at page 168, Alameda County Records, North  $88^{\circ}07'13''$  West, 422.49 feet to the most southeasterly corner of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;
  18. Thence along said southerly of Parcel 1 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, North  $89^{\circ}46'04''$  West, 1515.46 feet to a point of intersection with the easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County;

19. Thence—along said easterly line of Parcel 10 described in that certain deed recorded on April 8, 1984 as Document Number 84-064504 Official Records Alameda County, North 0°30'14" West, 746.23 feet to the TRUE POINT OF BEGINNING;

Containing an area of 45.45145 acres, more or less.

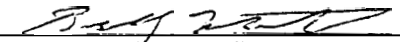
**Basis of Bearings:**

Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South 87°45'20" East between USC & GS Station "MAIN ATL" and USC & GS Station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

  
Billy Martin, P.L.S. 5797  
Expires: 6/30/2004



Dated: JULY 17, 2000

K:\MAIN\1998\980221\LEGALS\FISCNORTH071700.DOC

## FISC South

A parcel of land lying in the City and County of Alameda, State of California, and being a portion of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, and being all of Parcel 2 described in that certain deed recorded on September 2, 1948 in Book 5597 of Official Records at page 433 and being a portion of Parcel 1 described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on July 21, 1944 in Book 4499 of Official Records at page 401, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 384, Alameda County Records, and being a portion of the parcel described in that certain deed recorded on June 29, 1944 in Book 4499 of Official Records at page 316, Alameda County Records, and being a portion of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, and being a portion of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, and all of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, and all of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, and all of the parcel described in that certain deed recorded on September 16, 1959 in Book 9152 of Official Records at page 57, Alameda County Records, more particularly described as follows:

BEGINNING at the intersection of the northerly line of Atlantic Avenue, being 51 feet wide, and the easterly line of Main Street as shown on that certain map entitled "OFFICIAL RESURVEY OF PORTION OF SEGREGATION LINE AND VICINITY", filed for record on August 13, 1951 in Book 3 of Records of Survey at page 16 through 22, inclusive, in the Office of the Recorder of Alameda County:

1. Thence along said easterly line of Main Street and the westerly boundary line of the parcel described in that certain deed recorded on March 28, 1941 in Book 4023 of Official Records at page 499, Alameda County Records, North  $00^{\circ}34'11''$  East, 1240.19 feet to the southerly line of the parcel described in that certain deed recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, and the TRUE POINT OF BEGINNING;
2. Thence continuing along said easterly line of Main Street, North  $00^{\circ}34'11''$  East, 596.74 feet;

3. Thence leaving said easterly line of Main Street, South  $87^{\circ}57'28''$  East, 1923.89 feet;
4. Thence North  $02^{\circ}47'17''$  East, 364.75 feet to a point on the southerly line of Parcel 1 described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records;
5. Thence along said southerly line of Parcel 1 as described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, South  $87^{\circ}12'43''$  East, 351.25 feet;
6. Thence leaving said southerly line of Parcel 1 as described in that certain deed recorded on February 14, 1955 in Book 7567 of Official Records at page 117, Alameda County Records, North  $2^{\circ}47'17''$  East, 1161.09 feet;
7. Thence North  $87^{\circ}21'26''$  West, 426.49 feet to a point on the easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records;
8. Thence along said easterly line of the parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North  $2^{\circ}47'17''$  East, 293.60 feet to the northeasterly corner of said parcel;
9. Thence along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North  $89^{\circ}46'04''$  West, 1180.27 feet;
10. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, South  $76^{\circ}59'47''$  West, 30.74 feet;
11. Thence continuing along the northerly line of said parcel described in that certain deed recorded on August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, North  $00^{\circ}30'07''$  West, 15.37 feet;

12. Thence continuing along the northerly line of said parcel described in that certain deed recorded August 10, 1966 in Reel 1821 of Official Records at Image 494, Alameda County Records, South  $76^{\circ}59'47''$  West, 51.25 feet to a point on the easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County;
13. Thence along said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, North  $00^{\circ}30'13''$  West, 28.00 to the most northwesterly corner of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, being a point on a non-tangent curve to the right from which point a radial line bears South  $17^{\circ}36'08''$  East;
14. Thence leaving said easterly line of Parcel 9 described in that certain document recorded on April 8, 1984 as Document Number 84-064504 of Official Records, Alameda County, and along the northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, along said curve having a radius of 955.37 feet, through a central angle of  $1^{\circ}14'55''$ , for an arc length of 20.82 feet to a point of compound curvature;
15. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, along said curve having a radius of 557.56 feet, through a central angle of  $15^{\circ}51'00''$ , for an arc length of 154.24 feet;
16. Thence continuing along said northerly line of Parcel 2 described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 712, Alameda County Records, North  $89^{\circ}29'47''$  East, 183.18 feet to a point on the westerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records;
17. Thence along said westerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, North  $00^{\circ}42'53''$  West, 10.00 feet to the northwesterly corner of said parcel;

18. Thence along the northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2054 of Official Records at Image 707, Alameda County Records, North  $87^{\circ}10'47''$  East, 235.51 feet to the beginning of a tangent curve to the right;
19. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, along said curve having a radius of 1136.01 feet, through a central angle of  $3^{\circ}03'09''$ , for an arc length of 60.52 feet;
20. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2054 of Official Records at Image 707, Alameda County Records, South  $89^{\circ}46'04''$  East, 1216.24 feet;
21. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, South  $88^{\circ}07'13''$  East, 367.67 feet to the beginning of a tangent of curve to the right;
22. Thence continuing along said northerly line of the parcel described in that certain deed recorded December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, along said curve having a radius of 563.14 feet, through a central angle of  $6^{\circ}00'30''$ , for an arc length of 59.05 feet;
23. Thence continuing along said northerly line of the parcel described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 707, Alameda County Records, South  $82^{\circ}06'43''$  East, 335.29 feet to a point on the northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records;
24. Thence along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, South  $82^{\circ}06'43''$  East, 505.93 feet to the beginning of a tangent curve to the right;

25. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on August 9, 1945 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 2867.82 feet, through a central angle of  $00^{\circ}36'00''$ , for an arc length of 30.03 feet to a point of compound curvature;
26. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 1435.47 feet, through a central angle of  $1^{\circ}12'01''$ , for an arc length of 30.07 feet to a point of compound curvature;
27. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 958.04 feet, through a central angle of  $01^{\circ}47'59''$ , for an arc length of 30.09 feet to a point of compound curvature;
28. Thence continuing along said northerly line of Parcel 3 described in that certain deed recorded on June 20, 1956 in Book 4757 of Official Records at page 138, Alameda County Records, along said curve having a radius of 719.34 feet, through a central angle of  $1^{\circ}12'56''$ , for an arc length of 15.26 feet to the most northerly corner of Parcel A described in that certain deed recorded on December 1, 1967 in Book 2084 of Official Records at page 701, Alameda County Records, being a point on a non-tangent curve to the left from which point a radial line bears South  $66^{\circ}03'48''$  East;
29. Thence along the westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 30,050.01 feet, through a central angle of  $00^{\circ}56'00''$ , for an arc length of 489.48 feet to the beginning of a non-tangent curve to the left, from which point a radial line bears South  $2^{\circ}09'25''$  East;
30. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image



- 701, Alameda County Records, along said curve having a radius of 60.00 feet, through a central angle of  $63^{\circ}17'05''$ , for an arc length of 66.28 feet to a point of compound curvature;
31. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2084 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 1222.09 feet, through a central angle of  $31^{\circ}53'47''$ , for an arc length of 680.33 feet to a point of compound curvature;
32. Thence continuing along said westerly line of Parcel A described in that certain deed recorded on December 1, 1967 in Reel 2054 of Official Records at Image 701, Alameda County Records, along said curve having a radius of 1434.10 feet, through a central angle of  $07^{\circ}09'19''$ , for an arc length of 179.09 feet to a point on the southerly line of that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records;
33. Thence along said southerly line of the parcel described in that certain deed recorded on July 22, 1948 in Book 5582 of Official Records at page 597, Alameda County Records, North  $87^{\circ}12'43''$  West, 332.59 feet to the northwesterly corner of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records;
34. Thence along the westerly line of that certain Parcel Map recorded on October 2, 1981 in Book 131 of Maps at page 1 through 2, inclusively, Alameda County Records, South  $02^{\circ}04'31''$  West, 464.06 feet to a point on the northerly line of the parcel described in that certain deed recorded on February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records;
35. Thence along said northerly line of the parcel described in that certain deed recorded February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records, North  $87^{\circ}55'29''$  West, 499.91 feet to the northwesterly corner of said parcel;
36. Thence leaving said northerly line and along the westerly line of the parcel described in that certain deed recorded on February 11, 1960 in Reel 25 of Official Records at Image 976, Alameda County Records, South  $2^{\circ}08'09''$  West, 624.82 feet to a point on the southerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339;

37. Thence along said southerly line of the parcel described in that certain Judgment on Declaration of Taking entered in Civil Action No. 30735 recorded on December 21, 1951 in Book 6618 of Official Records at page 339, Alameda County Records, North  $87^{\circ}51'51''$  West, 2730.99 feet to the TRUE POINT OF BEGINNING.

Containing an area of 100.14102 acres, more or less.


Basis of Bearings:

Bearings are based on the California Coordinate System of 1927 Zone III using the bearing of South  $87^{\circ}45'20''$  East between USC & GS Station "MAIN ATL" and USC & GS station "ALT FIFTH". All distances in this description are ground distances. Multiply by 0.9999295 to obtain grid distances.

A plat showing the above description is attached herein and made a part hereof as Exhibit "B".

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyor's Act.

Prepared By:

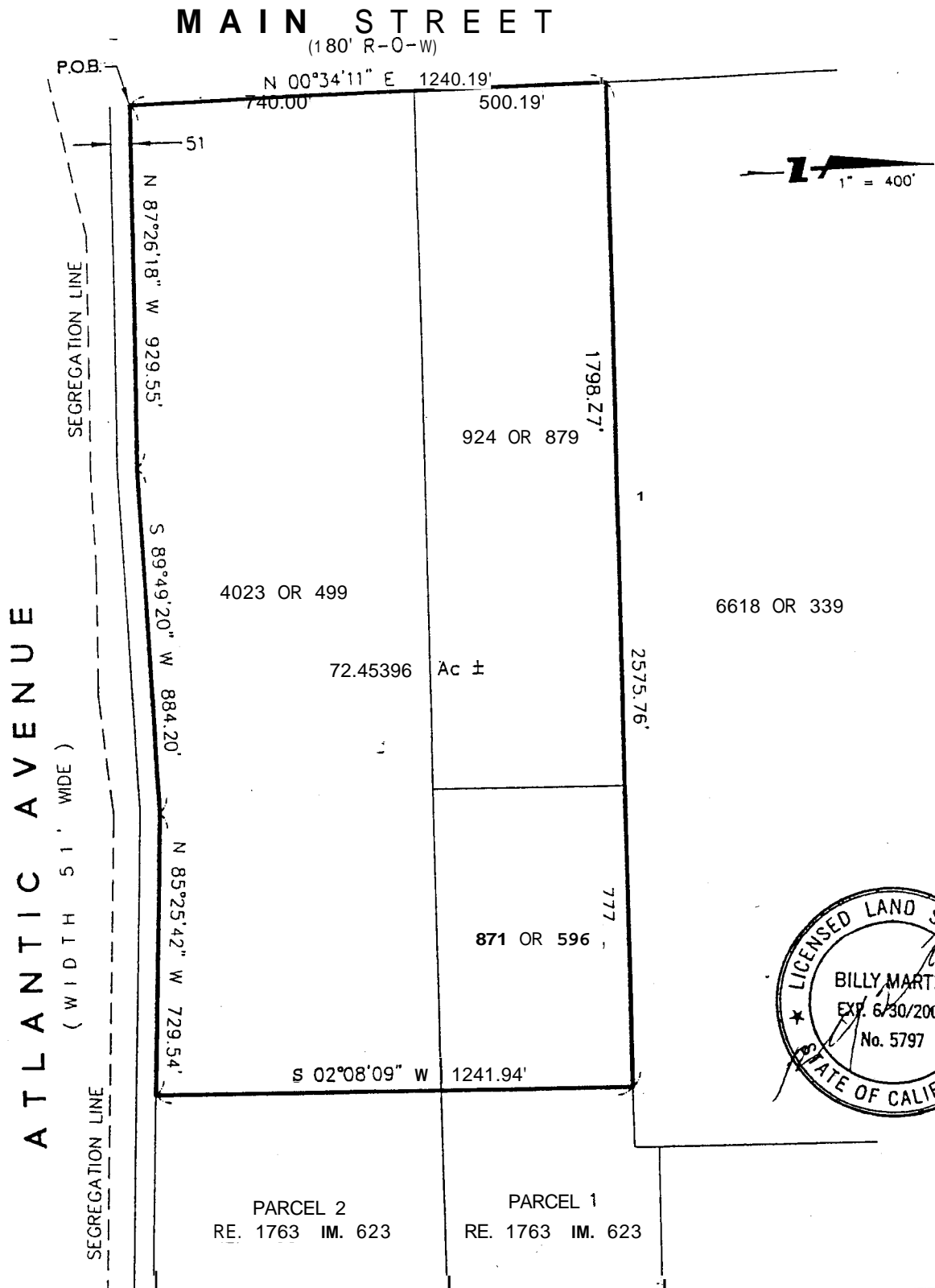
  
Billy Martin, P.L.S. 5797  
Expires: 6/30/2004



Dated: JULY 17, 2000

K:\MAIN\1998\980221\LEGALS\FISC SOUTH071700.DOC

# Exhibit B



**Brian Kangas Foulk**  
Engineers • Surveyors • Planners

540 Price Avenue  
Redwood City, CA 94063  
650/482-6300  
650/482-6399 (FAX)

Subject EXHIBIT "8"  
EAST HOUSING

Job No. 980221-10

By SPM Date 5-11-00 Chkd. MP

SHEET 1 OF 1

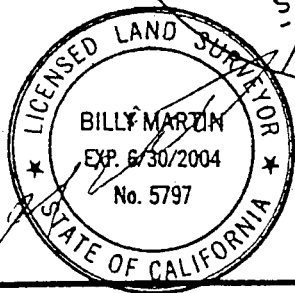
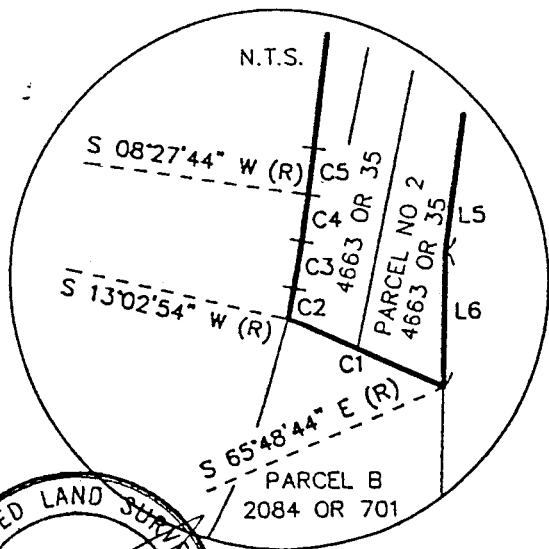
PARCEL 10  
DOC NO. 84064504  
(EASTERLY LINE OF PARCEL 10)

400'

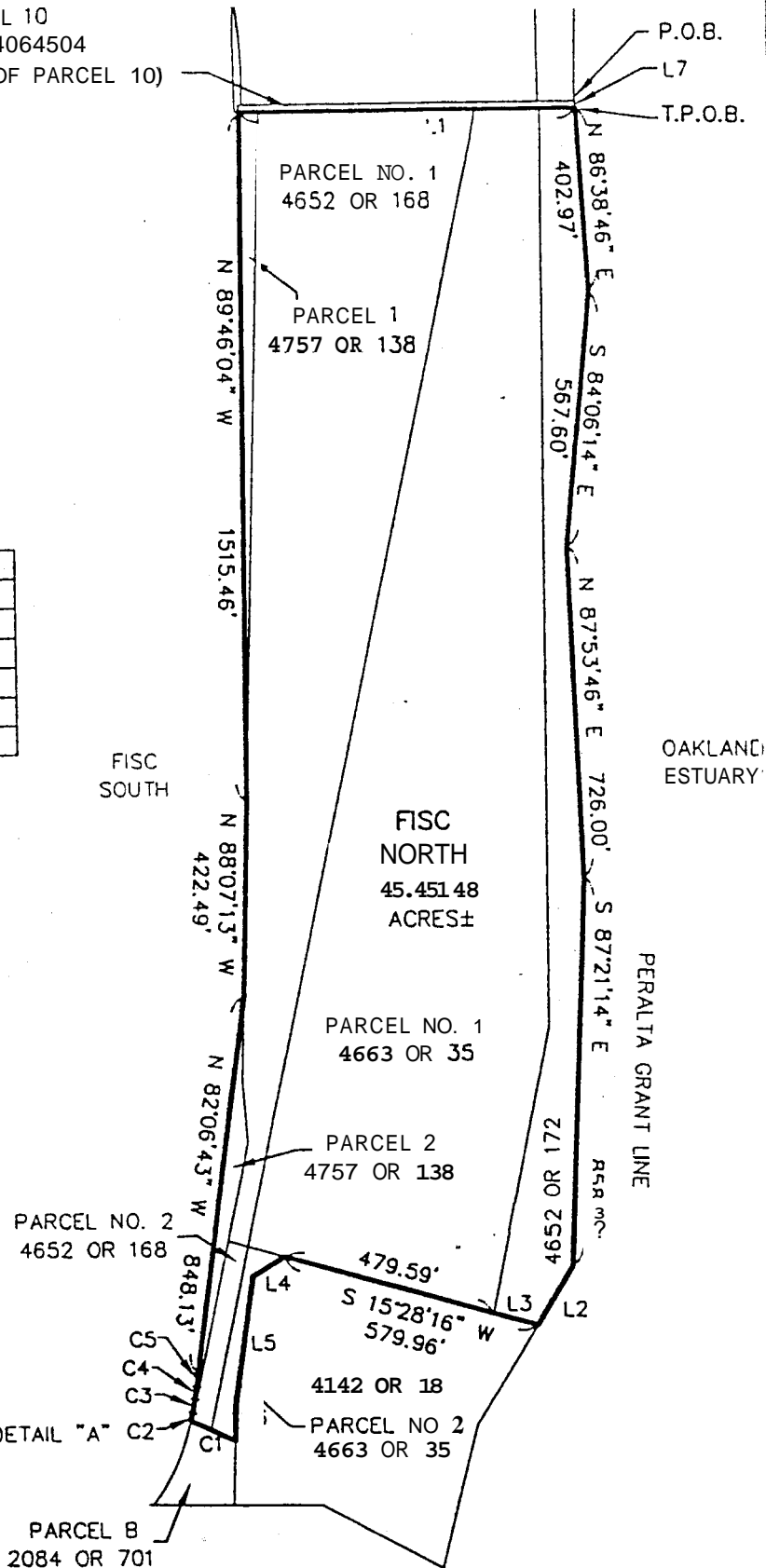
LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°30'14" W	746.23
L2	S 58°36'14" E	153.54
L3	S 15°28'16" W	100.37
L4	S 31°40'14" E	82.16'
L5	S 81°24'14" E	285.99
L6	S 88°00'44" E	87.24'
L7	N 86°38'46" E	16.02'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	00°12'27"	30050.01'	108.83'
C2	01°33'38"	741.84'	20.21'
C3	01°47'59"	980.54'	30.80'
C4	01°12'01"	1457.97'	30.54'
C5	00°36'00"	2890.33'	30.27'

## DETAIL "A"



SEE DETAIL "A"



**Brian Kangas Foulk**  
Engineers • Surveyors • Planners

540 Price Avenue  
Redwood City, CA 94063  
650/482-6300  
650/482-6399 (FAX)

Subject EXHIBIT "B"  
FISC NORTH  
Job No. 980221-10  
By RCS Date 05/15/00 Chkd. MP  
SHEET 1 OF 1

# MAIN STREET

(180' R-O-W)

1" = 500'

N 00°34'11" E  
1240.19'

ATLANTIC AVENUE  
(51' R-O-W)

4023 OR 499  
924 OR 879  
N 87°51'51" W  
2730.99'

596.74'

7567  
OR 117  
PARCEL 2

DOC. NO.  
85226306

DOC. NO.  
84064504

Curve Table			
No.	Radius	Delta	Length
C1	955.37'	01°14'55"	20.82'
C2	557.56'	15°51'00"	154.24'
C3	2867.82'	00°36'00"	30.03'
C4	1435.47'	01°12'01"	30.07'
C5	958.04'	01°47'59"	30.09'
C6	719.34'	01°12'56"	15.26'
C7	30050.01'	00°56'00"	489.48'
C8	60.00'	63°17'05"	66.28'
C9	1222.09'	31°53'47"	680.33'
C10	1434.10'	07°09'19"	179.09'

L1  
L2  
L3  
L4

S 17°36'08" E (R)

1821  
OR  
494

R=1136.01'  
Δ=03°03'09"  
L=60.52'

6618 OR 339

N 02°47'17" E  
364.75'

N 02°47'17" E  
364.75'

COAST GUARD HOUSING

PARCEL 1

7567 OR 117

N 02°47'17" E 1161.09'

100.14102± ACRES  
FISC SOUTH

FISC NORTH



Bearing Table		
No.	Bearing	Distance
L1	S 76°59'47" W	30.74'
L2	N 00°30'07" W	15.37'
L3	S 76°59'47" W	51.25'
L4	N 00°30'13" W	28.00'
L5	N 89°29'47" E	183.18'
L6	N 00°42'53" W	10.00'
L7	N 87°10'47" E	238.51'

PARCEL 1  
1763 OR 623

S 02°08'09" W  
624.82'

S 87°55'29" W  
499.91'

S 02°04'31" W  
464.06'

25 OR 976

131 PM 1

5582 OR 597

N 87°12'43" W  
332.59'

4499 OR 401

4499 OR 384

PARCEL 3  
4757 OR 138

2804 OR 707

R=363.14'  
Δ=06°00'30"  
L=59.05'

S 88°07'11" E  
367.67'

S 82°06'43" E 841.27'

C10

C9

C8

C7

C6

S 87°12'25" E (R)

2004 OR 701

S 66°03'48" E (R)

**Brian Kangas Foulk**  
Engineers • Surveyors • Planners

540 Price Avenue  
Redwood City, CA 94063  
650/482-6300  
650/482-6399 (FAX)

Subject **EXHIBIT "8"**  
**FISC SOUTH**

Job No. 980221-10  
By Res Date 5/12/00 Chkd. MP  
SHEET 1 OF 1

## Exhibit C

### CITY OF ALAMEDA ORDINANCE NO. 2824 New Series

RECEIVED

FEB 17 2000

CITY OF ALAMEDA  
ALAMEDA POINT

AMENDING THE ALAMEDA MUNICIPAL CODE BY  
AMENDING CHAPTER XIII (BUILDING AND HOUSING) BY  
ADDING A NEW SECTION 13-56 (EXCAVATION **INTO** THE  
MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL  
AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY  
CENTER, ALAMEDA ANNEX AND FACILITY) TO ARTICLE  
XVII (PITS, WELLS AND EXCAVATIONS)

WHEREAS, the marshlands and near shore ~~areas~~ once located adjacent to the island of Alameda were filled with dredge material between approximately 1900 and 1940; and

WHEREAS, the marsh crust, and the subtidal zone extending from it, is a horizon that is identifiable in the subsurface (the interface at the bottom of the fill material) which contains remnants of grasses and other intertidal and subtidal features; and

WHEREAS, the marsh crust/subtidal zone also contains, at least locally, elevated levels of petroleum-related **substances**, such as semi-volatile organic compounds, which substances may pose an unacceptable **risk** to human health and the environment if excavated in marsh crust/subtidal zone materials, brought to the ground surface and **handled** in an uncontrolled manner; and

WHEREAS, proper handling, storage and disposal of materials excavated from the marsh crust/subtidal zone, pursuant to state and federal hazardous materials laws, **will** help eliminate unacceptable exposures and **risks** to human health and the environment; and

WHEREAS, the Draft Base-wide Focused Feasibility **Study** for the Former Subtidal Area and Marsh Crust and Ground Water (U.S. Navy, February 20, 1999) recommends implementation by the City of **an institutional** control, such as **an** excavation ordinance, **as a remedial** action related to the cleanup by the United **States** Navy of Naval **Air** Station Alameda and the Fleet Industrial Supply Center, **Alameda** Annex **and** Facility, which closed **military** installations are anticipated to be transferred to the City; and

WHEREAS, it **can** be seen with **a** certainty that adoption of a permitting program by the City ~~that~~ requires proper **handling**, storage **and disposal**, pursuant to existing state **and** federal hazardous materials laws, of materials excavated from the marsh **crust/subtidal** zone **will** not involve or require any physical activities other ~~than~~ optional testing of excavated materials and, therefore, is exempt from the California Environmental **Quality** Act pursuant to California Code of Regulations, title **14**, section 15061(b)(3) because there is no possibility that the enactment of the ordinance may have a significant effect on the environment.

Approved as to form  
CITY ATTORNEY

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is hereby amended by adding a new Section 13-56 (Excavation ~~into~~ the Marsh Crust/Subtidal Zone at the Former Naval Air Station Alameda and Fleet Industrial Supply Center) to Article XVII (Pits, Wells and Excavations) of Chapter XIII (Building and Housing) thereof to read:

**13-56 EXCAVATION INTO THE MARSH CRUST/SUBTIDAL ZONE AT THE FORMER NAVAL AIR STATION ALAMEDA AND FLEET INDUSTRIAL SUPPLY CENTER, ALAMEDA ANNEX AND FACILITY.**

**13-56.1 DEFINITIONS.**

For purposes of this Section 13-56 the following definitions shall apply:

*Bay* shall mean San Francisco Bay, including the Oakland Estuary and the Oakland Inner Harbor.

*DTSC* shall mean the California Environmental Protection Agency, Department of Toxic Substances Control.

*Earth material* shall mean any rock, natural soil or fill or any combination thereof.

*Excavation* shall mean the mechanical removal of **earth** material.

*Hazardous materials*, as defined in California Health and Safety Code **sections 25260(d) and 25501(k)**, shall mean **any material** that, **because** of its quantity, concentration, or physical or **chemical** characteristics, poses a significant or **potential** hazard to **human** health and safety, or to the environment. Hazardous materials include, but are not **limited** to, hazardous substances, hazardous waste and any **material** which a handler or the **administering** agency has reasonable basis for believing would be **injurious** to the health and safety of persons or harmful to the **environment** if released **into the** workplace or the **environment**.

*Marsh crust* shall mean the underground layer that is the remnant of the **tidal** marsh that existed along the shoreline of **Alameda** Island before **filling** to create additional dry land. In many **places**, this layer **contains** substances from former **industrial** discharges that were retained in the historic marsh before **filling**.

*Subtidal zone* shall mean the underground layer that is the pre-filling Bay floor extension of the historic marsh. **Together**, the marsh crust **and** the subtidal zone constitute a single, continuous, underground layer that extends Bayward of the original mean higher high tide line of Alameda Island, before filling, throughout the area that was filled.

**Threshold depth** shall mean the depth below which a permit is required by this Section 13-56. The threshold depth is conservatively identified with the elevation above which there is little likelihood that substances from the historic marsh or Bay floor would have mixed during filling, including a margin of safety above the elevation of the historic marsh surface or subtidal zone. In no event will the threshold depth be above mean higher high water.

13-56.2 Permit Required.

- a. It shall be unlawful for any person, including utility companies and their employees and contractors, to excavate below a threshold depth above the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, as depicted in Exhibit A, hereto, without first obtaining a permit in writing from the Chief Building Official.
- b. All excavation below the threshold depth in the area subject to this Section 13-56 shall be performed solely in accordance with the permit as approved and issued by the City.

13-56.3 Depth of Excavation Subject to Permit Requirement.

The Chief Building Official shall establish a threshold depth, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, below which a permit shall be *required* for excavation pursuant to this Section 13-56. The threshold depth may vary by location. The Chief Building Official shall publish a map depicting the parcels and threshold depths for which a permit is required under this Section 13-56. The Chief Building Official may update the map, consistent with DTSC's remedial decision documents pertaining to the marsh crust/subtidal zone, as necessary to incorporate any new information concerning the depth of the marsh crust/subtidal zone received by the City since the preparation of the initial map or last update.

13-56.4 Exception to Permit Requirement.

- a. No permit shall be required under this Section 13-56 for pile **driving** or other penetration of ~~the marsh crust/subtidal zone that~~ involves neither (i) bringing materials from below the threshold **depth** to above the threshold depth; nor (ii) exposure of construction workers to soil excavated from below the threshold **depth**.
- b. No permit shall be required under this Section 13-56 for excavation associated with emergency *repair* of public infrastructure facilities; provided, however, that soil excavated from below the threshold depth in the ~~area~~ of the ~~marsh~~ crust/subtidal zone, as depicted on Exhibit A, must be managed as though it were hazardous in accordance with Subsection 13-56.8b.



### 13-56.5 Permit Application.

Application for a permit shall be made in writing on forms available in or from the Building Services Office and shall be filed in the Building Services Office. Subsection 13-1.2 of Article I of Chapter XXIII regarding Appeals (Section 105.1), Appeal Fee (Section 105.2), Expiration (Section 106.4.4), Permit Fees (Section 107.2) and Plan Review Fees (Section 107.3) shall apply to all permits issued pursuant to this Section 13-56. The information required to be provided on the application shall be determined by the Chief Building Official and shall include at a minimum:

- a. A description and map of the property that is to be excavated sufficient to locate the area of proposed excavation on Exhibit A.
- b. Detailed plans, prepared by a registered civil engineer licensed in the State of California, of the excavation work to be done, including a drawing with dimensions to scale of all proposed excavation activity.
- c. A statement of the maximum depth of excavation.
- d. All elevations in **plans** and application materials submitted to **the** City shall be referenced to City Datum and shall show depth below ground surface.
- e. A **Cost** estimate for purposes of determining the amount of the bond **required** to be obtained pursuant to Subsection 13-56.11.

### 13-56.6 Certifications and Acknowledgments.

- a. The following certifications shall be required as part of the permit application:
  - 1. The applicant shall sign a certification prepared by the Chief Building Official acknowledging receipt of notice that the property to be excavated may be in **the area** of the marsh crust/subtidal zone, and that hazardous materials may be encountered during excavation.
  - 2. The **applicant** shall sign a certification **prepared** by the Chief Building Official **acknowledging** that federal and state hazardous materials laws **and** regulations **will** apply to storage, **transportation** and disposal of any **materials** excavated from the marsh crust/subtidal zone that are hazardous materials.
  - 3. **The** applicant shall sign a certification prepared by the Chief Building Official acknowledging liability for disturbing **and** removing all materials from the marsh crust/subtidal zone in accordance with **this** Section 13-56 and the permit.

- b. All building and excavation permits issued for construction or excavation within the area subject to this Subsection 13-56 shall contain the following written warning:

“Pursuant to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, excavation work in the area of the marsh crust/subtidal zone within the area of the former Naval Air Station Alameda and Fleet and Industrial Supply Center, Alameda Annex and Facility, **as** depicted in Exhibit A to Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code, may be subject to special materials handling requirements. The permittee acknowledges that he or she has been informed of the special materials handling requirements of Section 13-56 of Article XVII of Chapter XIII of the Alameda Municipal Code and that hazardous materials may be encountered during excavation.”

#### **13-56.7 Notification Prior to Start of Excavation.**

- a. *After* receipt of a permit and no less than two (2) business days (forty-eight (48) hours ~~minimum~~) before commencement of any excavation activity in the area subject to this Section 13-56, the permittee shall notify the Chief Building Official of the **planned** start of excavation. Said notification shall include a schedule for any excavation work that will last for more than one day.
- b. The permittee shall give adequate notice to Underground Service Alert prior to commencing **any** excavation activity subject to this Section 13-56.

#### **13-56.8 Materials Handling.**

The permittee shall elect to follow one or more of the courses of action set forth below before **beginning** any excavation activities in the **area** subject to this Section 13-56. Unless otherwise demonstrated by the permittee by means of **reconnaissance** investigation pursuant to Subsection 13-56.8a, or unless the permittee prepares site **management** plans pursuant to Subsection 13-56.8c, soil below the threshold depth in the **area** of the marsh crust/subtidal zone, **as** depicted on Exhibit A, must be managed **as** though it were hazardous pursuant to Subsection 13-56.8b. The permittee may elect to follow Subsection 13-56.8a, but must comply with Subsection 13-56.8b or 13-56.8c if testing **demonstrates** that the materials below the threshold depth **are** hazardous materials. Copies of all reconnaissance **testing** results and/or existing information **used** to satisfy the reconnaissance investigation requirements of Subsection 13-56.8a shall be **reported** to and **filed** with the City. All observations or encounters with the marsh crust/subtidal zone during excavation shall be reported to the City.

- a. **Reconnaissance Investigation to Rule Out the Presence of Hazardous Materials Below the Threshold Depth.**

The permittee may elect to use reconnaissance borings, pursuant to a plan prepared by a qualified registered engineer or registered geologist, licensed in the State of California, to rule out, to the satisfaction of the Chief Building Official, the presence of hazardous materials below the threshold depth in the area to be excavated. As part or all of the reconnaissance plan, the permittee may make use of existing information, where appropriate, if the existing information is directly relevant to the location and depth to be excavated and contains observations or results of analyses that assist in concluding whether hazardous materials are present. The reconnaissance report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

1. If hazardous materials are found below the threshold depth within the area to be excavated at any time (during reconnaissance or during excavation), the permittee shall comply with either Subsection 13-56.8b or Subsection 13-56.8c, at his or her election.
2. If **hazardous** materials are not found below the threshold depth within the area to be excavated, no additional materials controls, except as otherwise may be required under applicable federal, state or local law, **are required** under this Section 13-56.

**b. Handling Materials Excavated From Below the Threshold Depth as Hazardous Materials.**

If the permittee has not ruled out the presence of hazardous materials pursuant to Subsection 13-56.8a, or elects not to prepare a site management plan and materials testing program pursuant to Subsection 13-56.8c, the permittee shall presume that materials excavated from below the threshold depth must be **disposed** at an appropriately permitted disposal facility. In addition, no excavated materials from below the threshold depth may be stockpiled prior to disposal or returned to the excavation.

**c. Preparation of Construction Site Management Plan for Handling Materials Excavated From Below the Threshold Depth.**

1. In lieu of **handling** materials excavated from below the threshold depth pursuant to the restrictions in Subsection 13-56.8b, the permittee may elect to hire a qualified registered engineer or **registered geologist**, licensed in the State of California, to develop a sitespecific construction site management plan, including a materials testing program, to the satisfaction of the Chief Building Official. The construction site management plan shall include, **at a minimum**, provisions governing control of precipitation run on and run off from stockpiled soils, soil segregation, securing of stockpiled soils, duration of stockpiling, and contingency plans for handling materials excavated from below the threshold depth that prove to be hazardous materials.

2. The permittee shall hire a qualified registered engineer or registered geologist, licensed in the State of California, to oversee compliance with the approved construction site management plan, and shall transmit to the Chief Building Official upon completion of the project written certification of compliance with the construction site management plan. The certification report shall include a description of all observations from below the threshold depth evidencing the presence or absence of the marsh crust/subtidal zone.

#### **13-56.9 Health and Safety Plan.**

The applicant shall cause to be prepared by a certified industrial hygienist, and keep on the construction site at all times, a health and safety plan to protect workers at the excavation site and the general public to the satisfaction of the Chief Building Official. The Chief Building Official may prepare and provide to applicants a model health and safety plan which, if used by the applicant, shall be modified by the applicant's certified industrial hygienist to suit the specific requirements of the applicant's project.

#### **13-56.10 Excavation Site Best Management Practices.**

All excavation and materials handling activities permitted under this Section 13-56 shall be conducted in accordance with applicable Alameda Countywide Clean Water Program Best Management Practices and City of Alameda Storm Water Management and Discharge Control Program Ordinance requirements.

#### **13-56.11 Bonds.**

Upon a finding by the Chief Building Official that a permit should issue for excavation pursuant to this Section 13-56, a surety or performance bond conditioned upon the faithful performance and completion of the permitted excavation activity shall be filed with the City. Such bond shall be executed in favor of the City and shall be maintained in such form and amounts prescribed by the Risk Manager sufficient to ensure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

#### **13-56.12 Nonassumption of Liability.**

In undertaking to require applicants for certain excavation permits to comply with the requirements of this Section 13-56, the City of Alameda is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on itself or on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

#### **13-56.13 Construction on City Property.**

- a. The Chief Building Official shall prepare standard work procedures that comply with all the requirements of this Section 13-56 for all City

construction or improvement activities involving excavation below the threshold depth in the area subject to this Section 13-56. All departments, boards, commissions, bureaus and agencies of the City of Alameda that conduct construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the area subject to this Section 13-56 shall follow such standard work procedures.

- b. The City shall include in all contracts involving excavation below the threshold depth in the area subject to this Section 13-56 a provision requiring City contractors to comply with all the requirements of this Section 13-56. All contracts entered into by departments, boards, commissions, bureaus and agencies of the City of Alameda that authorize construction or improvements on land under their jurisdiction involving excavation below the threshold depth in the **area** subject to this Section 13-56 also shall contain such standard contract provision.

#### 13-56.14 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by ~~my~~ court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Section 13-56 or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Section 13-56 irrespective of the fact that one or more **sections**, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective.

#### 13-56.15 Permit Fee.

No permits for excavation in the **marsh** crust/subtidal zone shall be issued unless a fee has been paid. The fee shall be set by City Council resolution.

#### 13-56.16 Penalties.

- a. Any person, including utility companies and their employees and contractors, violating any of the provisions of this Section 13-56 shall be **deemed** guilty of a **misdemeanor**, and each person shall be deemed **guilty of** a separate offense for each **and** every day or portion thereof during which any violation of any of the provisions of this Section 13-56 is committed, continued or permitted, and such violation may be prosecuted and punished as an **infraction** or misdemeanor pursuant to the provisions of Section 1-5.1 of the Alameda Municipal Code .
- b. Any person, including utility companies and their employees and contractors, that commences any excavation without first obtaining the necessary permits therefor shall, if subsequently allowed to obtain **a permit**, pay an amount, in

addition to the ordinary permit fee required, quadruple the permit fee otherwise required.

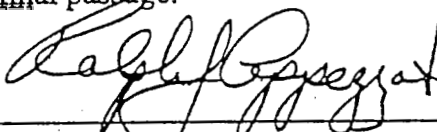
13-56.17      Retention **and** Availability of Permit **Files**

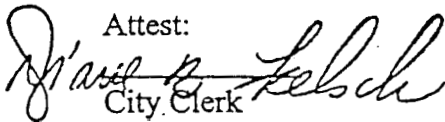
The City shall maintain files pertaining to all permits issued under this Section 13-56, and shall make such files available to DTSC for inspection upon request during normal business hours.

13-56.18      Amendment of Section 13-56

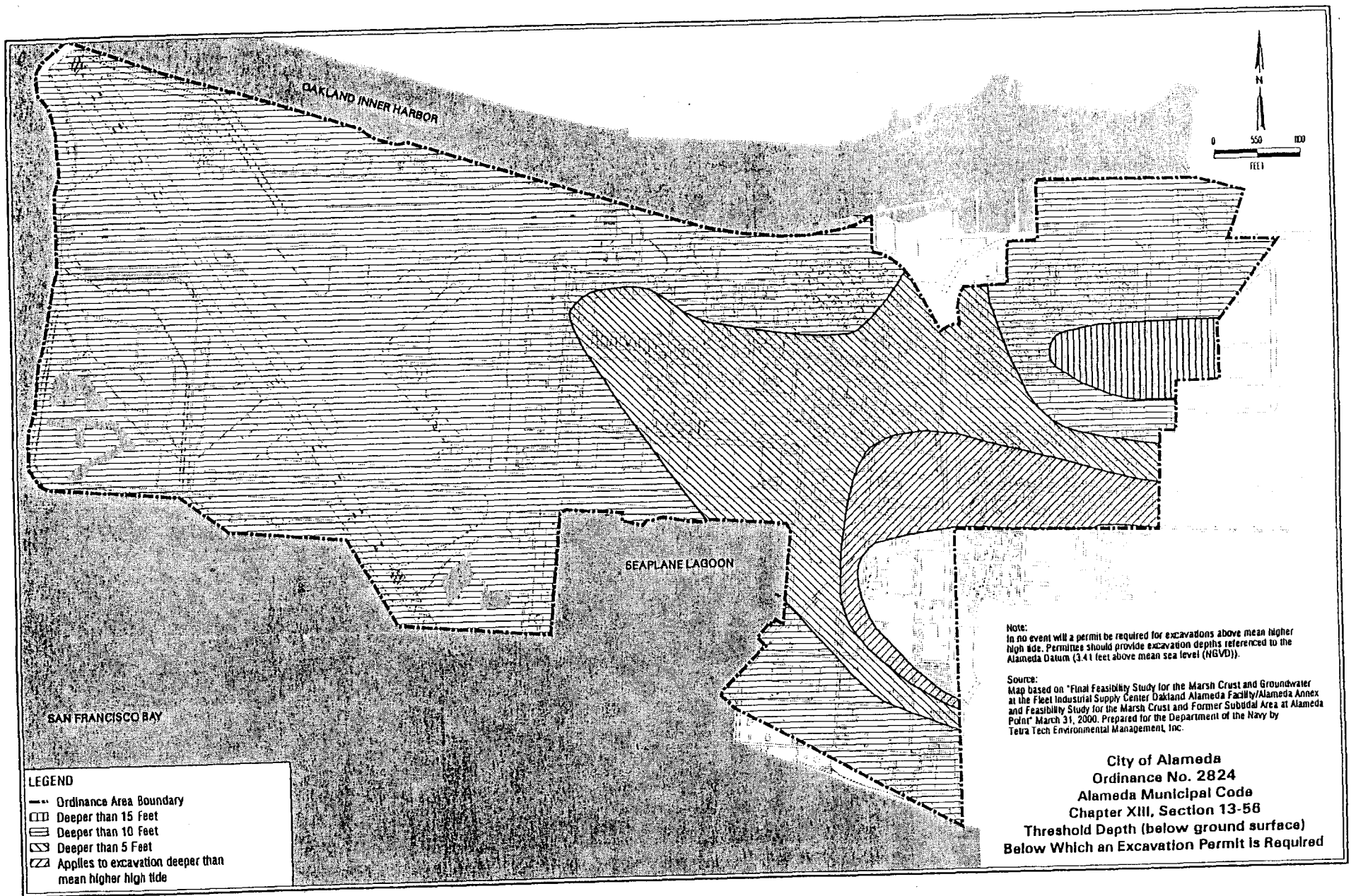
This Section 13-56 shall not be repealed or amended without thirty (30) days prior written notice to the DTSC Deputy Director for Site Mitigation.

Section 2.      This Ordinance shall be in full force and ~~effect~~ from and after the expiration of thirty (30) days from the date of its ~~final~~ passage.

  
\_\_\_\_\_  
Presiding Officer of the City Council

Attest:  
  
City Clerk

\* \* \* \* \*



I, the undersigned, hereby **certify** that the foregoing Ordinance ~~was~~ duly and regularly adopted and passed by the Council of the City of Alameda in regular meeting assembled on the 15th day of February, 2000, by the following vote to wit:

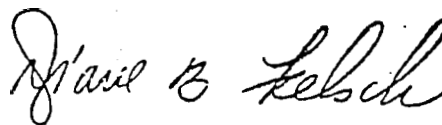
AYES: Councilmembers Daysog, DeWitt, Johnson, Kerr and  
Mayor Appezzato - 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

**IN WITNESS**, WHEREOF, I have hereunto set my hand and ~~affixed~~ the official seal of said City  
this ~~16th~~ day of ~~February~~, 2000.



\_\_\_\_\_  
Diane Felsch, City Clerk  
City of Alameda